

REMARKS

In response to the Restriction Requirement dated October 6, 2009, Applicants elect Group I, Species 2, with traverse. Claims 14 and 16-23 read on Group I, Species 2. No claim is currently considered a generic claim. However, upon allowance of the generic claim, Applicants request rejoinder of the non-elected claims.

In the Restriction Requirement, the Examiner indicated that all pending claims were subject to election as they do not relate to a single general inventive concept under PCT Rule 13.1 because under PCT Rule 13.2, the species lack the same or corresponding special technical feature as noted at the paragraph on page 2 of the instant office action.

Rule 13.1 states:

The international application shall relate to one invention only or to a group of inventions so linked as to form a single general inventive concept ("requirement of unity of invention").

Rule 13.2 states:

Where a group of inventions is claimed in one and the same international application, the requirement of unity of invention referred to in Rule 13.1 shall be fulfilled only when there is a technical relationship among those inventions involving one or more of the same or corresponding special technical features. The expression "special technical features" shall mean those technical features that define a contribution which each of the claimed inventions, considered as a whole, makes over the prior art.

Under Rule 13.2, the unity of invention has to be considered in the first place only in relation to the independent claims in an international application and not the dependent claims. By "dependent" claim is meant a claim which contains all the features of another claim and is in the same category of claim as that other claim (the expression "category of claim" referring to the classification of claims according to the subject matter of the invention claimed for example, product, process, use or apparatus or means, etc.). In the present application, only a single independent claim is recited.

Also, if the independent claims avoid the prior art and satisfy the requirement of unity of invention, no problem of lack of unity arises in respect of any claims that depend on the independent claims. In particular, it does not matter if a dependent claim itself contains a further

invention. Equally, no problem arises in the case of a genus/species situation where the genus claim avoids the prior art. Moreover, no problem arises in the case of a combination/subcombination situation where the subcombination claim avoids the prior art and the combination claim includes all the features of the subcombination.

In the present application, the Examiner is of the opinion that Andrysek (US Patent No. 7,087,090) shows a prosthetic knee joint with an upper part having a fastening device, a lower part pivotably connected to the upper part via an articulation device and a resistance device having adjustable resistance. Applicants submit that independent claims 1, 15, 24 and 25 clearly avoid Andrysek (US Patent No. 7,087,090). For example, Andrysek does not have a resistance device having an adjustable resistance. Instead, Andrysek shows a force transfer link 30 and force transfer link 34. The links 30 and 34; however, does not have an adjustable resistance. At best, force transfer link 30 provides shock absorption. Also, Andrysek shows a spring 36 to bias a latch member 30. However, the spring does not have adjustable resistance.

Also, because the search for each Species would substantially the same, Applicants submit that no undue or serious burden would be presented in concurrently examining all of the Species. Thus, for the above-noted reasons, the Examiner's Species Requirement is believed to be improper. Therefore, Applicants respectfully request that the Examiner reconsider and withdraw the restriction requirement in this application.

Thus, for the above-noted reasons, the Examiner's restriction is believed to be improper. Therefore, Applicants respectfully request that the Examiner reconsider and withdraw the election requirement in this application. Should there be any questions or comments, the Examiner is invited to contact the undersigned at the below-listed telephone number.

Respectfully Submitted,

Paul G. VAN DE VEEN et al.



Andrew M. Calderon
Reg. No. 38093

GREENBLUM & BERNSTEIN, P.L.C.
1950 Roland Clarke Place
Reston, VA 20191
(703) 716-1191